



U.S. Citizenship  
and Immigration  
Services

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 7 2004

IN RE:

Petitioner:

Beneficiary:

PETITION:

Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

Identification: not related to  
previous identification of person  
involved in other security

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**DISCUSSION:** The immigrant visa petition was denied by the Director of the California Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner indicates that it is a non-profit interdenominational organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ her as an "urban cross cultural missionary/community youth coordinator."

The director determined that the petitioner had not established that the beneficiary had been a member of a religious denomination that had a bona fide non-profit religious organization in the United States for two full years immediately preceding the filing date of the petition.

On appeal, counsel asserted that the petitioner is an interdenominational organization that is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code (IRC) and, as such, is considered a religious denomination. Counsel cites the regulation at 8 C.F.R. § 204.5(m)(2) as follows:

For purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The director of the AAO stated in his decision that the service center director "misstated the grounds for denial of the visa petition" . . . and that "to establish eligibility for special immigrant classification of employees, a petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding." The director of the AAO also determined that the petitioner had not established that it is a bona fide non-profit religious organization.

Pursuant to 8 C.F.R. § 103.5(a)(1)(i), any motion to reconsider a proceeding before CIS must be filed within 30 days of the decision that the motion seeks to reopen.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet the requirements of 8 C.F.R. 103.5(a)(1)(i) must be dismissed.

The decision by the director of the AAO, dated July 18, 2002, clearly advised the applicant that any motion must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before August 20, 2002. The motion to reconsider was not properly filed with the Vermont Service Center until September 16, 2002.

Based upon the applicant's failure to file a timely appeal, the motion must be dismissed.

It is noted that the petitioner has provided sufficient evidence to establish that: it is a bona fide non-profit religious organization; the beneficiary was a member of a religious denomination that has a bona fide non-profit religious organization in the United States for at least the two years immediately preceding the filing date of the petition; and, it is a qualifying religious organization as defined at 8 C.F.R. § 204.5(m)(2). Nevertheless, the petition may

not be approved at this time because the petitioner has not provided sufficient evidence to establish that the proffered position qualifies as a religious occupation. The petitioner indicated that the position involves fund-raising. While the petitioner has not provided any information as to the percentage of the beneficiary's time to be spend on fund-raising activities, the regulation at 8 C.F.R. § 204.5(m)(2) includes fund raising in a list of occupations that do not qualify as religious occupations. If the petitioner can provide sufficient evidence to overcome this issue, the dismissal of this motion does not preclude the filing of a new petition on behalf of the beneficiary.

It is also noted that a different petitioner, Nueva Generacion en Cristo, filed a separate Form I-360, Petition for Amerasian, Widow, or Special Immigrant, seeking to employ the beneficiary as its "Youth Ministries Director" on October 2, 2002 (WAC-02-005-52174). Counsel indicated in the letter that accompanied that petition that Nueva Generacion en Cristo has a "close affiliation" with City Team Ministries, including a solid financial partnership. Counsel further stated:

When [the beneficiary's] original I-360 petition, with City Team Ministries as the sponsoring organization, was denied in 2001, [redacted] (in Christ Church) offered to stand in as the sponsoring religious organization in order to ensure that [the beneficiary's] vital work on behalf of low-income Latino youth in East San Jose can continue.

In a letter dated September 8, 2003, counsel for [redacted] requested that that petition be withdrawn because the beneficiary had temporarily returned to Canada. Accordingly, the service center director issued a decision withdrawing that petition on September 23, 2003. The petitioner in this proceeding, City Team Ministries, has not withdrawn the instant petition. As the motion will be dismissed because it was not timely filed, this issue will not be addressed further.

The burden of proof in these proceedings rests solely on the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.